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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re RUSSELL C., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

RUSSELL C.,

Defendant and Appellant.

C040843

(Super. Ct. No. JV105920)

Following a contested jurisdictional hearing, the Placer County Juvenile Court sustained a petition charging minor Russell C. with committing a hit and run resulting in death. (Veh. Code, § 20001, subd. (a).) At the time he committed the hit and run, the minor was on juvenile probation for resisting an officer in Sacramento County and had not yet appeared on a new Sacramento petition charging him with vandalism. (Pen. Code, §§ 148, subd. (a)(1), 594, subd. (b)(1).) Placer County transferred the disposition of the hit and run petition to Sacramento County. After the minor admitted the vandalism

charge, Sacramento County committed the minor to the California Youth Authority (CYA) on all three petitions with a maximum confinement time of four years eight months.

On appeal, the minor contends the Sacramento County juvenile court abused its discretion by committing him to the CYA. We disagree, and affirm.

FACTS AND PROCEDURAL HISTORY

A. *The Resisting Arrest Petition (Sacramento County Case No. JV105920)*

On May 23, 2000, the minor's mother contacted the Sacramento County Sheriff's Department to report that the minor was harboring another minor who had absconded from juvenile hall. When the officers apprehended the minor and the escapee, the minor was placed in the back of a patrol car. The minor kicked the rear window, causing damage. The minor admitted the allegation in the petition and was placed on informal probation under Welfare and Institutions Code section 654.2. After the minor failed to comply with probation conditions, on February 14, 2001, he was adjudged a ward of the juvenile court and placed in his father's custody.

B. *The Vandalism Petition (Sacramento County Case No. JV105920)*

On July 3, 2001, the minor vandalized a car belonging to a friend of his girlfriend. After failing to appear for a jurisdictional hearing on November 5, 2001, a bench warrant was issued for the minor. The minor was apprehended on a warrant

after his arrest on the felony hit and run. He admitted the charge.

**C. *The Hit and Run Petition (Placer County
Case No. 52-001107)***

On November 6, 2001, at about 6:00 p.m., Andy Torres, a 78-year-old man, was crossing several lanes of traffic on Atlantic Street in Roseville, pushing a lawn mower. The minor struck the man with his truck, apparently in the slow lane. There were skid marks up to the body. Two eyewitnesses saw the minor's truck in the slow lane but neither saw the truck stop.

The minor claimed he thought he had hit a lawn mower. Because he was driving without a driver's license, he fled the scene. The minor admitted he had smoked marijuana before the accident. He drove to his uncle's house in North Highlands. He and his uncle went to his father's house, and the three of them then returned to the uncle's house in North Highlands to look at the damage. His father believed the minor had hit more than a lawn mower. After seeing the accident on the evening news, the minor turned himself in to the Roseville Police Department about midnight. The Placer County juvenile court sustained the allegation on January 7, 2002.

The case was originally set for disposition in Placer County. The juvenile court noted that the minor's performance on probation had been unsatisfactory, including failing to appear for court hearings, failing to attend school, and driving without a license. The probation officer described the minor's performance on probation in Sacramento County as unsatisfactory

because he failed to go to orientation or participate in the work project. The Placer County probation officer stated the minor would only serve from 12 to 18 months in the CYA and would receive counseling and substance abuse treatment, and would be able to complete his high school education.

After hearing the evidence, the Placer County juvenile court transferred the minor's case to Sacramento County for disposition with the recommendation that the minor be committed to the CYA. (Welf. & Inst. Code, § 750.)

At the Sacramento County disposition hearing, the juvenile court reviewed the transcript of the Placer County disposition hearing and the probation reports that had been prepared. After hearing from the minor, the minor's family members, the victim's family, and the victim's advocate, the juvenile court committed the minor to the CYA.

DISCUSSION

The minor contends the Sacramento County juvenile court abused its discretion in committing him to the CYA because his record consisted of only two minor misdemeanor violations, and less restrictive alternatives were not considered by either probation report or by the juvenile court. We conclude the juvenile court did not abuse its discretion.

Welfare and Institutions Code section 734 provides: "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by

the reformatory educational discipline or other treatment provided by the Youth Authority."

The juvenile court's decision to commit a minor to the CYA will be reversed only for abuse of discretion. In reviewing a CYA commitment, we must determine whether substantial evidence supports the commitment, examining the record presented at the dispositional hearing in light of the purposes of the juvenile court law and indulging all reasonable inferences to support the judgment. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 579; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.)

The juvenile court should consider less restrictive alternatives to CYA commitment as to whether they would be ineffective, and should demonstrate that there is a probable benefit to the minor if he is committed to the CYA. (*In re Teofilio A., supra*, 210 Cal.App.3d at p. 576; *In re George M.* (1993) 14 Cal.App.4th 376, 379-380.) However, the juvenile court is not required to actually try alternative placements when, in its considered evaluation, the needs of the minor and the protection of society require a CYA commitment. Moreover, the "safety and protection of the public" is a proper factor in determining the appropriate disposition. (Welf. & Inst. Code, § 202, subd.(a).)

The Sacramento County juvenile court had the benefit of two separate probation reports, the transcript of a Placer County proceeding, two separate investigations, and two recommendations for CYA based on the needs of the minor

and the needs of society. The minor had the opportunity to present letters and testimony supporting his character and remorse to both courts.

The Sacramento County juvenile court was particularly troubled by the minor's persistent pattern of ignoring the law. Not only had the minor failed to comply with past probation conditions, but the minor had been driving, by his own admission, since he was 13--without a license or insurance. As the court stated, if the minor had not been driving his truck, the victim would not be dead. Indeed, on the day of the offense, the minor was driving after smoking marijuana. The minor failed to appear for a scheduled court date in Sacramento County the day before the offense and was subject to arrest on a bench warrant.

The juvenile court chronicled at some length the minor's failures to cooperate with juvenile court conditions. Defense counsel suggested confinement in the Sacramento Boys Ranch, noting that the minor did not appear to have been at fault in the accident. The court stated that if the hit and run had been the minor's first time in the juvenile system, the CYA would not be considered. However, the court rejected other alternatives due to the minor's persistent and wide-ranging refusal to conform his conduct to acceptable bounds; in the court's words, "he thumbed his nose at the law," and a man died as a result. The Sacramento County juvenile court then concluded that, despite the minor's remorse and family support, he needed

discipline and structure, with punishment used as a tool for achieving rehabilitation.

Based on the record, we cannot say that the juvenile court abused its discretion. The court picked an option to benefit both the minor and society. The juvenile court made it clear that the minor's history and the seriousness of the offense precluded a less restrictive alternative.

DISPOSITION

The judgment (order of the court committing the minor to the California Youth Authority) is affirmed.

DAVIS, Acting P.J.

We concur:

NICHOLSON, J.

CALLAHAN, J.